



NDIS Quality
and Safeguards
Commission

Joint Standing Committee on the NDIS
Inquiry into the NDIS Quality and Safeguards Commission
Answer to Question on Notice

Reference: SQ21-000072

Complaints relating to forensic detention

Hearing: 20 May 2021

Hansard Page: 26

Question:

Ms PAYNE: Your supplementary submission states that a search of complaints data indicated that very few complaints related to the circumstances of forensic detention. Could you elaborate on that. Approximately how many complaints have been received, and how has the commission dealt with these complaints, given that your jurisdiction over it is not very extensive?

Mr Head: I don't actually have the detail of the individual complaints referred to in this submission with me, but I am quite happy to take that on notice and provide more detail. Ms Taylor may have something to add, based on her knowledge of the matters that are referred to here, but I'm happy to take it on notice.

Answer:

Refer to SQ21-000077.



Joint Standing Committee on the NDIS
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Answer to Question on Notice

Reference: SQ21-000073

Staffing profile

Hearing: 20 May 2021

Hansard Page: 27

Question:

Senator STEELE-JOHN: Okay. Could you give me as snapshot of what your current staffing footprint is, as of now?

Mr Head: I couldn't give you the exact figures today, but I'll take that on notice. We're currently completing the recruitment of the permanent positions that we were funded for in the budget uplift. We will have an ASL of 350 plus contractors on top of that. As part of that process, currently we have additional contractors in place, so our total FTE at the moment would be above that number. But I'll take on notice what the figures are as at the end of April.

Answer:

As at 30 April 2021, the NDIS Quality and Safeguards Commission (NDIS Commission) had an Australian Public Service (APS) headcount of 315 and 174 labour hire staff as part of our workforce, bringing the combined headcount to 489.

Following the 2020-21 Budget, the NDIS Commission increased use of labour hire and contractors as a temporary measure to supplement front line service delivery ahead of uplift of our APS workforce. As APS staff commence, the NDIS Commission will see a proportionate reduction in the surge workforce.



Joint Standing Committee on the NDIS
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Reference: SQ21-000074

ASL reduction

Hearing: 20 May 2021

Hansard Page: 27

Question:

Senator STEELE-JOHN: Alright. Can I just clarify that? I noticed in the budget your ASL, if I remember rightly, is currently 342 and that represents a reduction of about eight positions.

Mr Head: I don't have the portfolio budget statements with me today, and there are some movements that I think are explained in the notes to the budget statements that relate to COVID funding et cetera. Because I have a whole slew of numbers here, I don't wish to give you an incorrect number. But essentially the budget decision in the current year's budget, 2021, gave us an uplift of around 105 ASL, I think. We're currently just completing recruitment. I'm happy to either provide an additional explanation on the movements in a question on notice, or, indeed, when we're in budget estimates the week after next.

Senator STEELE-JOHN: Alright. If you could get that on notice that would be great.

Answer:

The 2020-21 Budget increased the NDIS Quality and Safeguards Commission's (NDIS Commission) resourcing to \$308 million over the forward years, including lifting the NDIS Commission's Average Staffing Level (ASL) cap in 2020-21 from 241.1 to 350.

The NDIS Commission's ASL reduces from 350 in 2020-21 to 342 in 2021-22. This change recognises the workforce impact following the completion of transition of quality and safeguarding to the NDIS Commission in all states and territories and the progression from start-up, through transition and now toward steady state operations. Following the 2020-21 Budget uplift, the NDIS Commission has increased staffing in all frontline functions across all state and territory offices and its contact centre.



Joint Standing Committee on the NDIS
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Answer to Question on Notice

Reference: SQ21-000075

Staff Breakdown by Jurisdiction

Hearing: 20 May 2021

Hansard Page: 27

Question:

Senator STEELE-JOHN: Where I was going with it was I particularly want to know your distribution on the ground in the NT and in Western Australia. If you could provide, for the NT, folks based in Alice and folks based in Darwin and, for WA, metro Perth versus Broome, say, in the north of Western Australia, that would be useful. Thank you.

Mr Head: I'm happy to provide state breakdowns of our offices. As a distributed organisation of the size we've talked about, we do not have non-capital city offices in the states and territories, and I think I've provided that advice before to the committee. We do have arrangements, though, and I'm happy to provide to you information about how parts of our South Australian office work with the Territory office around remote parts of the Territory et cetera, so I'm happy to explain how we do some of that work.

Answer:

As at 30 April 2021, the NDIS Quality and Safeguards Commission's (NDIS Commission) total headcount (excluding labour hire and contractors) by state and territory offices was:

National Office	NSW	SA	ACT	NT	VIC	QLD	TAS	WA	Total
119	38	30	14	6	37	37	9	25	315

Original planning during the establishment of the NDIS Commission included a concept of the South Australia State Office providing support to the Northern Territory (NT) office, primarily for investigations and behaviour support. As the NDIS Commission moved towards a steady state of maturity, it became evident that from an access and resourcing point of view, this support would come from the Queensland State Office.

The NDIS Commission's Queensland state office provides both direct and indirect support to the NDIS Commission's NT State Office. This includes support for investigations, compliance, reportable incidents, the National Unauthorised Restricted Practices Taskforce, and behaviour support.



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Answer to Question on Notice

Reference: SQ21-000076

Mainstream interface working group

Hearing: 20 May 2021

Hansard Page: 28

Question:

Senator STEELE-JOHN: I've heard that you've got a working group in relation to interface principles; is that correct?

Mr Head: DSS works with the states and territories on interface. We would be involved in those discussions as they relate to safeguarding issues in that context.

Senator STEELE-JOHN: Is that working group still functioning? Is the working group on innovative principles still functioning in the disability injustice space?

Mr Head: I'm not the best person to ask. I think where those processes are up to is really a question for DSS. As I said, we're involved in various processes when they raise safeguarding issues, but there's a whole host of issues broader than the commission's remit that have been discussed in terms of mainstream service interface.

Senator STEELE-JOHN: But, to your knowledge, is the commission still participating in that interface working group?

Mr Head: I don't have direct knowledge of that at the moment, but I can take it on notice.

Senator STEELE-JOHN: Ms Taylor, do you?

Ms Taylor: No, I can't answer either. We will take that on notice.

Answer:

The NDIS Quality and Safeguards Commission (NDIS Commission) engages with the Department of Social Services (DSS) on mainstream system interface projects when quality and safeguarding input is needed.

DSS has advised that under the Disability Reform Ministers, a tasking group on NDIS System Reform and Mainstream Interface, comprised of Commonwealth, state and territory senior officials, is currently being established. This tasking group replaces the various working groups on mainstream interface areas under the former Disability Reform Council.

Further questions on the governance arrangements for mainstream interface are most appropriately directed to DSS.



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Reference: SQ21-000077

Data on violence against, or abuse and neglect of people in forensic settings

Hearing: 20 May 2021

Hansard Page: 30

Question:

Senator STEELE-JOHN: So, following the advice that you've been given, you've still identified for us a context in which you would have jurisdiction in relation to restrictive practice. Would you be able to go back and check to see whether you actually do have any data on violence against, or abuse and neglect of, people in these kinds of forensic settings for us?

Mr Head: I can, but, as I've indicated before—notwithstanding the fact that there are some limited circumstances where our jurisdiction will have been triggered—that will not be at any kind of scale in terms of what you're looking at. I'll consult about whether or not people would like to discuss this in the next consultative Committee, which is scheduled for July.

Senator STEELE-JOHN: Alright.

Answer:

The NDIS Commission's operating system does not record data indicating directly whether a complaint or reportable incident is one that relates to a person with disability detained under a forensic order.

However, a search of the complaints data using relevant key words suggests that the NDIS Commission has received very few complaints in which circumstances of forensic detention have been mentioned. To determine the specific number would require the interrogation of individual records and involve an unreasonable diversion of resources.



Joint Standing Committee on the NDIS
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Answer to Question on Notice

Reference: SQ21-000078

Independent Assessments

Hearing: 20 May 2021

Hansard Page: 30

Question:

Senator STEELE-JOHN: Alright. You've come to us in the second half of a day's worth of hearings as the committee. The first half was in relation to independent assessments. I want to refer you to a letter, co-signed by Mr Hoffman, that you were kind enough to send to me. I think it was last month. There were some concerns raised around the jurisdiction of the commission to take complaints from individuals participating in the independent assessments trial and participants who might come under independent assessments were they to be implemented. It was a concern that we heard from the ACT minister—it was also shared and they also attempted to clarify this point, and it sounds like you gave the same advice to the minister. In your letter to me you did make clear that you can take complaints. It wasn't perfectly clear from your letter, though, whether or not you consider you have the jurisdiction to take action in relation to those complaints—to take an enforcement action or any of the actions that may be triggered as part of an investigation, or indeed to investigate a complaint in relation to an independent assessor, or that kind of context. Can you clarify for us whether you believe you do have the power to investigate that complaint and, if you resolve that that complaint is substantial, take relevant enforcement actions?

Mr Head: Yes, I can. In forming a view about being able to take the complaint, it's really a question about whether or not the assessors would be within jurisdiction. I think the view that we hold—and I think either I or Mr Hoffman may have said this in additional estimates—is that the intention in the future is that assessors would be covered. And then you asked the follow-up question about whether or not they were covered during the trial. Our view is that, both in the future and currently, they're covered, and that means that they would have the standing of unregistered providers, subject to the code of conduct and our investigative and compliance actions attached to breaches of the code of conduct. That is the situation as I understand it, but I'm happy to clarify it to you in more detail if you wish. Essentially, what it means is that we can take all of the enforcement actions for an unregistered provider except those that only relate to registration.

Senator STEELE-JOHN: Thank you, Mr Head.

Answer:

The NDIS Quality and Safeguards Commission (NDIS Commission) is satisfied that the organisations in the independent assessment (IA) pilot fall within the NDIS Commission's jurisdiction as 'NDIS providers' (refer to Question on Notice response NDIA SQ21-000034 from 2020-21 Additional Estimates).

As NDIS providers, IA organisations and their staff must comply with the NDIS Code of Conduct (the Code) in providing assessment services to people with disability.

As such, an independent assessor is subject to all the compliance, investigation and enforcement powers that are available to the NDIS Commissioner under the *National Disability Insurance Scheme Act 2013* (NDIS Act) in relation to unregistered NDIS providers.

These powers can be used to investigate and take appropriate action in response to any complaints or other intelligence that the NDIS Commission receives that raise concerns about the independent assessor's compliance with the Code or their suitability to provide services to people with disability.

Some of the potential actions are:

- issuing a compliance notice that requires the assessor to take (or refrain from taking) specific action to address actual or possible non-compliance with the Code;
- issuing an infringement notice, or initiating court proceedings to seek a civil penalty, if the assessor has contravened the NDIS Act by not complying with the Code; and
- making a banning order that prohibits the assessor from providing services to people with disability, either permanently or for a period.

Decisions about what, if any, action to take will be made in accordance with the NDIS Commission's published Compliance and Enforcement Policy and applicable requirements of the NDIS Act. In some cases, the appropriate response will be education of the assessor about their obligations under the NDIS Act.



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Reference: SQ21-000079

NDIS Commission guidelines in relation to Independent Assessors

Hearing: 20 May 2021

Hansard Page: 30

Question:

Senator STEELE-JOHN: You could ban them, fine them and otherwise take action against them; you just couldn't revoke their registration. So you could take that action against an assessor or against their employing organisation?

Mr Head: I think so. Ms Taylor looks like she wants to jump in.

Ms Taylor: Thank you. Senator, we've issued guidance to our staff around this matter, which I'm happy to share with the committee, which clarifies for staff in our complaints function and also our contact centre that both the organisations that employ the assessors and the assessors themselves have obligations under the code.

CHAIR: Ms Taylor, if you can provide us with those guidelines you referred to, we'd appreciate that.

Ms Taylor: Yes.

Senator STEELE-JOHN: Yes, please. If you could provide them on notice for us as a committee, that would be great as well.

Ms Taylor: Certainly.

Answer:

The NDIS Quality and Safeguards Commission's independent assessment complaints guidance for staff is provided at [Attachment A](#).

Independent Assessment Pilot

April 2021

Key points

- The NDIA is rolling out a new approach to Independent Assessments (IAs) in the NDIS.
- It is intended that the IAs will be used to inform decision-making about a person's functional capacity and the value of funding provided in their NDIS plans.
- The NDIA has established an approved panel of 8 assessments providers to deliver IAs.
- The approach to IAs is being piloted. 3 of the 8 providers are participating in the pilot.
- Participants participating in the pilot are supplied with contact details in the NDIA to give feedback about the process.
- The NDIS Commission is satisfied that the organisations in the IA pilot fall within the NDIS Commission's jurisdiction as 'NDIS providers'.
- As NDIS providers IA organisations and their staff must comply with the NDIS Code of Conduct in providing assessment services to people with disability.
- The NDIS Commission is therefore able to receive complaints about the provision of those services, in the context of an IA provider's or their workers' adherence to the NDIS Code of Conduct.
- The NDIA will take complaints regarding the IA process, including decisions that might be made as a result of the IA.
- Where an IA provider is also a registered provider, their conditions of registration apply only to the supports and services for which they are registered, those conditions do not extend to IA services.
- The NDIS Commission will share information with the NDIA about any trends in complaints regarding the IA, and will refer complaints that are out of the NDIS Commission's jurisdiction to the NDIA.

What is an independent assessment?

An independent assessment is an evaluation of a person's ability to manage the tasks and activities of every-day life and may become part of the process for accessing the NDIS. This means that people with disability will no longer need to organise their own assessment and collect their own evidence from their health care provider. The NDIA will be meeting the costs of IAs for all NDIS Participants, through the providers on their panel.

An IA assessor will use standardised assessment tools to gather information to make an assessment of an individual's functional capacity. A person's age and primary disability will determine which and how many of the assessment tools need to be completed.

The results of the independent assessment will be sent to the NDIA to inform decisions about a person's eligibility to access the NDIS, and if already a participant, their personalised plan budget. The participant's planner or Local Area Coordinator (LAC) will talk to the participant about their results at their planning meeting.

The new IA approach is being piloted. Full rollout will require amendment to the NDIS Act 2013.

Who are the independent assessors?

Independent assessors are engaged by organisations appointed by the NDIA as part of an approved tender. The NDIA undertook an open tender process to select the initial 8 organisations that will deliver the independent assessments. These organisations will engage the health care professionals who will perform the independent assessments. The independent assessors are health care professionals from a range of areas including occupational therapists, physiotherapists, speech pathologists, clinical and registered psychologists, rehabilitation counsellors and social workers.

The organisations on the panel are:

- Advanced Personnel Management (APM)
- Allied Care Group
- HealthStrong
- Outlook Matters Psychology, Innovative Rehab, Pain NT
- Konekt
- Rehab Management (Aust) Pty Ltd
- Access Care Network Australia □ IPAR Rehabilitation

The three organisations undertaking IAs as part of the pilot are:

- Advanced Personnel Management (APM)
- Allied Care Group
- HealthStrong

Complaints about independent assessors

Independent assessors (providers and their workers) are required to comply with the NDIS Code of Conduct. This means that the NDIS Commission can take complaints about independent assessors. This might include:

- The manner in they conduct assessments, **for example** that they undertake their work in a professional, respectful and polite manner, respecting the decision making rights of the person with disability. This might include ensuring that they accommodate the person's preference in undertaking the assessment in a location and at a date and time that reasonably accommodates the preferences of the person with disability.
- Respecting the privacy of the person with disability, **for example** not discussing their assessment or their responses to assessment questions with other people.
- Being honest, acting with integrity and being open and transparent with a person with disability, **for example** not withholding any information that the person with disability could reasonably be expected to have access to about the IA.
- Taking steps to raise and act on concerns about the safety of supports and services provided to a person, **for example** advising another provider, or the NDIS Commission

about any concerns for a person's safety that they might encounter when undertaking the assessment.

- Preventing and responding to all forms of violence against, and exploitation, neglect and abuse of, people with disability, **for example** if a person with disability alleges that an assessor may have abused them in some way.

NDIS Commission officers must handle complaints about IA providers and workers undertaking the assessments in accordance with the NDIS (Complaints Management and Resolution) Rules 2018.

Maintaining records of IA related complaints

Where a complaint is made about an IA service NDIS Commission officers recording the matter in COS should ensure that they identify the complaint in COS by using the **#independentassessment**.

Referring out of scope matters

As the NDIA undertakes the independent assessment pilot there may be complainants who want to give feedback on the process itself or the types of tools used, rather than complaining about the actions or approach of the provider. Such feedback will be collected by the NDIA, and any person seeking to provide that feedback will be directed to the NDIA for that purpose.

The NDIA will also take complaints about the IA providers, and the IA process itself. The NDIA monitors the performance of these organisations through a contract. Instead, the complainant should be redirected back to the NDIA, or the NDIS Commission can provide feedback to the agency at COMPLAINTS.internal@ndis.gov.au.

The NDIS Commission and the NDIA will refer matters within their respective jurisdictions in accordance with the [Complaints Handling and Reportable Incidents Operational Protocol](#).

IA providers that are registered

The following IA providers are registered NDIS providers:

- Konekt
- Rehab Management (Aust) Pty Ltd
- HealthStrong

Similarly some professionals who may be engaged by IA providers may be registered as a registered NDIS provider.

The IA services do not constitute classes of support for which a provider can be registered. Therefore the obligations of a registered provider, including adhering to conditions of registration, do not apply in the delivery of IA services.

Where an IA provider is registered as a registered NDIS provider, the types of complaints that might be received about them in respect to the IA delivery are a valid source of intelligence about the provider that can be taken into account alongside other interactions with the NDIS Commission when determining things like compliance activities, or suitability.

Where an IA provider is also a registered NDIS provider, their conditions of registration apply only to the supports and services for which they are registered. Those conditions do not extend to IA services. This includes, for example, the obligation to report a reportable incident that might occur in the course of delivering an IA service.



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Joint Standing Committee on the NDIS
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Answer to Question on Notice

Reference: SQ21-000080

Complaints received relating to independent assessments

Hearing: 20 May 2021

Hansard Page: 31

Question:

Senator STEELE-JOHN: Do you currently have any investigations or have you received any complaints in relation to independent assessors or these organisations to this date?

Mr Head: My understanding is that we received at least one complaint very recently, but that may have changed.

Senator STEELE-JOHN: If you could take it on notice for us, that would be great.

Answer:

Independent assessors (providers and their workers) are required to comply with the NDIS Code of Conduct. This means that the NDIS Quality and Safeguards Commission (NDIS Commission) can take complaints about independent assessors. Any complaint received in relation to independent assessors is handled in accordance with the *National Disability Insurance Scheme (Complaints Management and Resolution) Rules 2018*.

As at 31 May 2021, the NDIS Commission has received four complaints relating to independent assessments. Three of the complaints received were considered to be 'out of scope' for the NDIS Commission, as the issues raised related to access to the pilot, or enquiries regarding the independent assessment process. One complaint is currently under assessment by the NDIS Commission.